

AMENDED IN SENATE AUGUST 23, 2012

AMENDED IN SENATE AUGUST 7, 2012

AMENDED IN SENATE JUNE 7, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2021

Introduced by Assembly Member Wagner

February 23, 2012

An act to amend Section 7108.5 of the Business and Professions Code, and to amend Sections 8800, 8812, and 8814 of the Civil Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2021, as amended, Wagner. Works of improvement: disputed amounts.

Existing law contains various provisions relating to contracts for the performance of private works of improvement, including provisions for the withholding and disbursement of retention proceeds. Existing law provides that, with respect to those contracts for works of improvement, the retention proceeds withheld from any payment may not exceed 150% of the disputed amount.

This bill would increase the amount that may be withheld from progress payments or final payments, depending on the circumstances, to a sum of various amounts and percentages, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7108.5 of the Business and Professions Code is amended to read:

7108.5. (a) A prime contractor or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, ~~unless otherwise agreed to in writing~~, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein, *unless otherwise agreed to in writing*. In the event that there is a good faith dispute over the amount due on a progress payment, the prime contractor or subcontractor may withhold from the progress payment an amount not to exceed the sum of the following:

(1) ~~The liquidated damages assessed against the subcontractor~~ *delay damages for which the subcontractor may be liable.*

(2) One hundred fifty percent of the estimated cost of repair or replacement of subcontract work that was not performed according to the subcontract.

(3) *The amount of any written claim against the prime contractor for a violation of the Labor Code or a collective bargaining agreement by the subcontractor or any other person performing work required by the subcontract.*

(4) *That portion of any mechanics lien or stop payment notice claim by the subcontractor or any other person performing work required by the subcontract for which the subcontractor has already been paid.*

(5) *The amount that would have been withheld by the owner pursuant to Section 8470 or 8522 of the Civil Code, but for a bond provided by the prime contractor pursuant to Section 8424 or 8510 of the Civil Code.*

(b) Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(c) The sanctions authorized under this section shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal.

1 (d) This section applies to all private works of improvement
2 and to all public works of improvement, except where Section
3 10262 of the Public Contract Code applies.

4 SEC. 2. Section 8800 of the Civil Code is amended to read:

5 8800. (a) Except as otherwise agreed in writing by the owner
6 and direct contractor, the owner shall pay the direct contractor,
7 within 30 days after notice demanding payment pursuant to the
8 contract is given, any progress payment due as to which there is
9 no good faith dispute between them. The notice given shall comply
10 with the requirements of Chapter 2 (commencing with Section
11 8100) of Title 1.

12 (b) If there is a good faith dispute between the owner and direct
13 contractor as to a progress payment due, the owner may withhold
14 from the progress payment an amount not in excess of the sum of
15 both of the following:

16 (1) The liquidated damages assessed against the contractor.

17 (2) One hundred fifty percent of the estimated cost of repair or
18 replacement of contract work that was not performed according
19 to the contract.

20 (3) *The amount of any written claim against the owner for a*
21 *violation of the Labor Code or a collective bargaining agreement*
22 *by any contractor.*

23 (4) *That portion of any mechanics lien or stop payment notice*
24 *claim by any contractor for which the direct contractor has already*
25 *been paid.*

26 (c) An owner that violates this section is liable to the direct
27 contractor for a penalty of 2 percent per month on the amount
28 wrongfully withheld, in place of any interest otherwise due. In an
29 action for collection of the amount wrongfully withheld, the
30 prevailing party is entitled to costs and a reasonable attorney's fee.

31 (d) This section does not supersede any requirement of Article
32 2 (commencing with Section 8810) relating to the withholding of
33 a retention.

34 SEC. 3. Section 8812 of the Civil Code is amended to read:

35 8812. (a) If an owner withholds a retention from a direct
36 contractor, the owner shall, within 45 days after completion of the
37 work of improvement, pay the retention to the contractor.

38 (b) If part of a work of improvement ultimately will become
39 the property of a public entity, the owner may condition payment

1 of a retention allocable to that part on acceptance of the part by
2 the public entity.

3 (c) If there is a good faith dispute between the owner and direct
4 contractor as to a retention payment due, the owner may withhold
5 from final payment, *unless already withheld from a progress*
6 *payment*, an amount not in excess of the sum of all of the following:

7 (1) The liquidated damages assessed against the contractor.

8 (2) The amounts ~~that are~~ withheld pursuant to Sections 8470
9 and 8522.

10 (3) One hundred fifty percent of the estimated cost of
11 uncompleted contract work, except for those costs that are withheld
12 under ~~paragraph (2)~~ *any paragraph of any subdivision of this*
13 *section*.

14 (4) One hundred fifty percent of the estimated cost to repair or
15 replace contract work that was not performed according to the
16 contract, except for those costs that are withheld under *any other*
17 ~~paragraph (2) or (3)~~ *of any subdivision of this section*.

18 (5) *The amount of any written claim against the owner for a*
19 *violation of the Labor Code or a collective bargaining agreement*
20 *by any contractor.*

21 (6) *That portion of any mechanics lien or stop payment notice*
22 *claim by any contractor for which the direct contractor has already*
23 *been paid.*

24 SEC. 4. Section 8814 of the Civil Code is amended to read:

25 8814. (a) If a direct contractor has withheld a retention from
26 one or more subcontractors, the direct contractor shall, within 10
27 days after receiving all or part of a retention payment, pay to each
28 subcontractor from whom retention has been withheld that
29 subcontractor's share of the payment.

30 (b) If a retention received by the direct contractor is specifically
31 designated for a particular subcontractor, the direct contractor shall
32 pay the retention payment to the designated subcontractor, if
33 consistent with the terms of the subcontract.

34 (c) If a good faith dispute exists between the direct contractor
35 and a subcontractor, the direct contractor may withhold from the
36 retention to the subcontractor an amount not in excess of the sum
37 of all of the following:

38 (1) ~~The liquidated delay damages assessed against the~~
39 ~~subcontractor for which the subcontractor may be liable.~~

1 (2) That portion of any mechanics lien or stop payment notice
2 claim by the subcontractor *or any other person performing work*
3 *required by the subcontract* for which the subcontractor has already
4 been paid.

5 (3) The amount that would have been withheld by the owner
6 pursuant to Section 8470 or 8522, but for a bond provided by the
7 direct contractor pursuant to Section 8424 or 8510.

8 (4) One hundred fifty percent of the estimated cost of
9 uncompleted subcontract work, except for those costs that are
10 withheld under *any other paragraph-(2) of any subdivision of this*
11 *section.*

12 (5) One hundred fifty percent of the estimated cost to repair or
13 replace subcontract work that was not performed according to the
14 subcontract, except for those costs that are withheld under *any*
15 *other paragraph-(2)-or-(3) of any subdivision of this section.*

16 (6) *The amount of any written claim against the direct contractor*
17 *for a violation of the Labor Code or a collective bargaining*
18 *agreement by the subcontractor or any other person performing*
19 *work required by the subcontract.*